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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,827	09/12/2003	Andreas Hartlep	SCHWP0177USA	7728

7590 02/25/2009
RENNER, OTTO, BOISSELLE & SKLAR, LLP
Nineteenth Floor
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Cleveland, OH 44115-2191

EXAMINER

CHAO, ELMER M

ART UNIT	PAPER NUMBER
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3737

MAIL DATE	DELIVERY MODE
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02/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/661,827	Applicant(s) HARTLEP ET AL.	
	Examiner ELMER CHAO	Art Unit 3737	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-16 and 18-22.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Long V Le/
Supervisory Patent Examiner, Art Unit 3768

/Elmer Chao/
Examiner, Art Unit 3737

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that Kucharczyk does not teach "capturing via an imaging system functional anatomical data and/or structural anatomical data before infusion of a fluid into the tissue". However, the claimed invention does not specifically state that the step of capturing can be done without the use of any infusion fluid. As Applicants have pointed out in the arguments, Kucharczyk's Fig. 7 does show that at least a second infusion is repeated after analysis of the first infusion. Therefore, Kucharczyk's teaching does satisfy the claimed limitation based on the fact that the subsequent infusion and thereby injection of the infusion fluid is done after the analysis. Based on a previous interview conducted, Examiner recalls Applicants' hesitation to use the phrase "any infusion fluid" instead of the phrase "an infusion fluid". Therefore, Examiner cannot interpret the claims as they stand to convey the idea of not using "any infusion fluid". Examiner believes that the actual scope of this invention lies somewhere inbetween the literal interpretations of the phrases "any infusion fluid" and "an infusion fluid". In order to properly overcome Kucharczyk, Applicants are advised to provide antecedent basis for the phrase "infusion fluid" and/or "fluid" and correspond that phrase to the original introduction of the fluid. Then, the steps of the subsequently claimed capturing and evaluating steps can be recited to eliminate the use of that specific infusion fluid, thereby overcoming Examiner's interpretation of Kucharczyk. Regarding the limitation "identifying direction channels within the tissue and determining infusion distribution information related to the identified channels", Examiner informs Applicants that as these limitations are worded, they can be reasonably interpreted first and foremost as mental steps. Furthermore, Applicants do not describe what it means specifically to "identify directional channels". However, Examiner has provided Applicants with Kucharczyk's explicit example of actually mapping the drug delivery (see at least fig. 7, fourth box from the bottom). Examiner asserts that this action of "mapping the drug delivery" would definitely satisfy the limitation "identify directional channels" to one of ordinary skill in the art.